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8 Attorneys for Plaintiff Frank Joseph Carderella

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 FRANK JOSEPH CARDERELLA, ) CASE NO. CV 09-8299 R (MANx)  
13 )  
14 Plaintiff, ) **PLAINTIFF'S NOTICE OF**  
15 ) **MOTION AND MOTION FOR**  
16 vs. ) **IMPOSITION OF ISSUE-RELATED**  
17 ) **SANCTIONS/ EVIDENTIARY**  
18 JANET NAPOLITANO, as Secretary ) **SANCTIONS (ADVERSE**  
19 of the Department of Homeland ) **INFERENCE SANCTION AND/OR**  
20 Security ) **SANCTION DEEMING FACT**  
21 ) **ESTABLISHED AND/OR**  
22 Defendant. ) **EXCLUSIONARY SANCTION );**  
23 ) **MEMORANDUM OF POINTS AND**  
24 ) **AUTHORITIES; DECLARATIONS**  
25 ) **OF JOHN A. STILLMAN AND**  
26 ) **FRANK CARDERELLA; REQUEST**  
27 ) **FOR JUDICIAL NOTICE IN**  
28 ) **SUPPORT THEREOF**  
29 )  
30 ) Date: October 12, 2010  
31 ) Time: 10:00 a.m.  
32 ) Ctrm: Spring Street Courthouse  
33 ) 312 North Spring Street, Ctrm 8  
34 ) Los Angeles, California 90012  
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36 )  
37 )  
38 )

1 ) Trial Date: October 19, 2010  
 2 ) Time: 9:00 a.m.  
 3 ) Ctrm: Spring Street Courthouse  
 4 ) 312 North Spring Street, Ctrm 8  
 5 ) Los Angeles, California 90012  
 6 )  
 7 ) Honorable Manuel L. Real  
 8 )

9 TO DEFENDANT AND ITS ATTORNEY OF RECORD;

10 PLEASE TAKE NOTICE that on October 12, 2010, at 10:00 a.m., or as  
 11 soon thereafter as this matter may be heard, in Courtroom 8 of the above-entitled  
 12 Court located at the Spring Street Courthouse, 312 North Spring Street, Los  
 13 Angeles, California 90012, the Honorable Manuel L. Real presiding, plaintiff  
 14 Frank Carderella ("Carderella" or "Plaintiff"), will, and hereby does, move this  
 15 court for Issue Related Sanctions/Evidentiary Sanctions in the form of: (1) an  
 16 adverse inference that the records destroyed by Defendant would have supported  
 17 a finding of the alleged discrimination and/or (2) that the fact of said  
 18 discrimination by Defendant against Plaintiff is deemed established as follows: "  
 19 Defendant denied an employment opportunity to Plaintiff when on September 15,  
 20 1996, Plaintiff was not selected, despite his qualifications, for the position of  
 21 Detention Enforcement Officer, GS-7 because of Plaintiff's race (white), sex  
 22 (male), religion (Catholic) and national origin (Italian)." and/or (3) exclusion of  
 23 any evidence offered by Defendant to refute discrimination and/or (4) such other  
 24 sanctions as this court may deem appropriate.

25 This motion is made on the grounds that the INS has admitted to  
 26 destroying the records and files relevant to the alleged discrimination of Plaintiff  
 27 despite both a legal and internal duty to preserve the same upon notice of  
 28 Plaintiff's discrimination claim. As a consequence of said destruction there are no  
 records or files from which Plaintiff can establish the alleged discrimination. Nor,

1 do any of the INS employees who would have likely participated in the alleged  
2 discriminating selection to fill the vacant DEO position have any recollection  
3 regarding the same. As a consequence, Plaintiff has been substantially prejudiced  
4 in the prosecution of his claim for discrimination. Under such circumstances, this  
5 court has the inherent power to impose the requested sanctions.

6 This motion is based on this Notice of Motion, the Memorandum of Points  
7 and Authorities, Declarations of John A. Stillman and Frank Carderella and the  
8 Request for Judicial Notice.

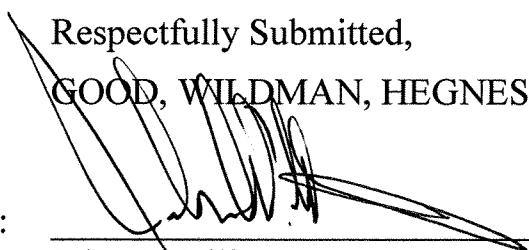
9 This motion is made following the conference of counsel pursuant to  
10 L.R.7-3 which took place on September 7-8, 2010.

11 Date 9/10/10

12 Respectfully Submitted,

13 GOOD, WILDMAN, HEGNESS & WALLEY

14 By:

15   
16 John A. Stillman, Attorneys for Plaintiff,  
17 Frank Joseph Carderella  
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